



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11-43; FCC 20-55; FRS 16708]

Video Description: Implementation of the Twenty-First Century Communications and

Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to expand its video description regulations by phasing them in for an additional 10 designated market areas (DMAs) each year for four years, beginning on January 1, 2021. The Commission also proposes to modernize the terminology in our regulations to use the term “audio description” rather than “video description.” Finally, it proposes to make a non-substantive edit to the video description rules, to delete outdated references to compliance deadlines that have passed.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 11-43, by any of the following methods:

- Federal Communications Commission’s Web Site: <http://apps.fcc.gov/ecfs>. Follow the instructions for submitting comments.
- Mail: Filings may be sent by commercial overnight mail, or by U.S. Postal Service first-class, Express, or Priority mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, Diana.Sokolow@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking, FCC 20-55, adopted on April 22, 2020 and released on April 23, 2020. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The full text of this document will also be available via ECFS at <http://apps.fcc.gov/ecfs>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. In the Notice of Proposed Rulemaking (*NPRM*), the Commission proposes to expand its video description regulations by phasing them in for an additional 10 designated market areas (DMAs) each year for four years, beginning on January 1, 2021. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) directed the Commission to submit a report to Congress on October 8, 2019, assessing certain aspects of video description. The CVAA also provides that as of October 8, 2020, “based upon the findings, conclusions, and recommendations” contained in that report, the Commission has the authority to phase in the

video description regulations for up to an additional 10 DMAs each year, if it determines that the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable.¹ Through this *NPRM*, the Commission invites comment on its proposal to phase in its video description regulations for an additional 10 DMAs each year for four years, including comments on whether the costs of such an expansion would be reasonable.² This proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

2. In addition, we propose to modernize the terminology in part 79 of the Commission’s regulations to use the term “audio description” rather than “video description.” While the CVAA uses the term “video description,” there appears to be wide support among consumer organizations and industry for the proposed change. The Commission invites comment on this proposal.

3. Video description³ makes video programming⁴ more accessible to individuals who are blind or visually impaired through “[t]he insertion of audio narrated descriptions of a television program’s key visual elements into natural pauses between the program’s dialogue.”⁵ Video description is typically provided through the use of a secondary audio stream, which

¹ Specifically, pursuant to the “continuing Commission authority” provision of the CVAA, the Commission has authority “to phase in the video description regulations for up to an additional 10 [DMAs] each year (I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.”

² In the Second Report, the Media Bureau (Bureau) indicated that it would issue a public notice in early 2020 “to consider whether the costs of such an expansion would be reasonable.” Rather than issue a public notice, we have decided to issue this *NPRM* containing specific proposals, which will similarly allow the Commission to develop a record on all relevant issues, including costs and benefits.

³ We note that although the CVAA uses the term “video description” in this context, the Commission considers the terms “video description” and “audio description” to be synonymous and welcomes commenters to use either term to describe this service for purposes of this rulemaking proceeding.

⁴ “Video programming” refers to programming provided by, or generally considered comparable to programming provided by, a television broadcast station but does not include consumer-generated media.

⁵ 47 CFR 79.3(a)(3).

allows the consumer to choose whether to hear the narration by switching from the main program audio to the secondary audio. As required by section 202 of the CVAA, the Commission adopted rules in 2011 requiring certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide video description for a portion of the video programming that they offer to consumers on television.

4. The current video description rules require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top 60 television markets to provide 50 hours of video-described programming per calendar quarter during prime time or on children's programming,⁶ as well as an additional 37.5 hours of video-described programming per calendar quarter at any time between 6 a.m. and midnight.⁷ In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or on children's programming, as well as an additional 37.5 hours of video description per calendar quarter at any time between 6 a.m. and midnight, on each of the top five national nonbroadcast networks that they carry on those systems.⁸ The top five nonbroadcast networks

⁶ On July 1, 2015, full-power affiliates of the top four television broadcast networks located in markets 26 through 60 became subject to the video description requirements in addition to the top 25 markets already covered by the requirements.

⁷ Covered broadcast stations became subject to the requirement to provide an additional 37.5 hours of video description as of the calendar quarter beginning on July 1, 2018. In addition, the rules require "[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description." 47 CFR 79.3(b)(3).

⁸ For purposes of the video description rules, the top five national nonbroadcast networks include only those that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime-time programming that is not live or near-live or otherwise exempt under the video description rules. The list of the top five networks is updated every three years based on changes in ratings and was last updated on July 1, 2018 (remaining in effect until June 30, 2021). Covered MVPDs became subject to the requirement to provide an additional 37.5 hours of video description as of the calendar quarter beginning on July 1, 2018. In addition, MVPD systems of any size must pass through video description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming.

currently subject to the video description requirements are USA Network, HGTV, TBS, Discovery, and History.⁹

5. The CVAA required the Commission to submit two reports to Congress related to video description. In the First Report, submitted to Congress in June 2014, the Bureau found that “[t]he availability of video description on television programming has provided substantial benefits for individuals who are blind or visually impaired, and the industry appears to have largely complied with their responsibilities under the Commission’s 2011 rules.” The Bureau also found, however, that “consumers report the need for increased availability of and easier access to video-described programming, both on television and online.”

6. The CVAA required the Commission’s Second Report to assess, among other topics, “the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [video-described] programming” and “the need for additional described programming in [DMAs] outside the top 60.” The Bureau submitted the Second Report to Congress in October 2019. This report found that consumers who are blind or visually impaired derive significant benefits from the use of video description and, while it observed that there has been significant progress in the types and amount of video-described programming available over the past five years, it also noted that consumers would benefit from additional described programming. The Bureau observed that the record “indicates that consumers seek expansion of the video description requirements to DMAs outside the top 60, and it provides no basis for concluding that consumers would benefit less from video description in those markets than in other areas.”

7. As to the information regarding the costs to program owners, providers, and

⁹ On October 7, 2019, the Bureau released an order that grants a limited waiver of the video description rules with respect to USA Network for the remainder of the current ratings period ending on June 30, 2021, but it declined to grant a safe harbor from the video description requirements for other similarly situated, top 5 nonbroadcast networks. As a condition of the waiver, USA Network must air at least 1,000 hours of described programming each quarter without regard to the number of repeats and must describe at least 75 percent of any newly produced, non-live programming that is aired between 6:00 a.m. and midnight per quarter.

distributors of creating video-described content, the Bureau reported in the Second Report that the maximum cost of creating video-described programming remains consistent with the Commission’s 2017 estimate of \$4,202.50 per hour, while the cost of described pre-recorded programming can be as low as \$1,000 per hour. The Bureau also noted that, according to one industry commenter, “costs should be manageable for network affiliates that receive programming via a network feed and simply pass through any video description.”¹⁰ This commenter further claimed that some stations “could be forced ‘to devote a substantial portion of their limited resources to compliance’” and some might “face significant expenditures, such as the purchase of additional equipment, to facilitate video description.”¹¹ The Second Report also noted a consumer commenter’s claim that “passing through [an] audio stream that is already included on national broadcast network programming should not be burdensome, regardless of market, because the emergency information rules already require the use of the secondary audio stream.”¹² In its summary, the Bureau stated that commenters did not offer “detailed or conclusive information” as to the costs of such an expansion or a station’s ability to bear those costs. It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable, explaining that, “[s]hould the Commission seek to expand the video description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine that ‘the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable.’”¹³

8. *Expanding the Number of Markets Subject to Video Description Requirements.*

We propose to phase in the video description requirements for an additional 10 DMAs each year

¹⁰ Second Report at para. 27 (citing National Association of Broadcasters (NAB) Comments for Second Report).

¹¹ Id.

¹² Id. (citing Timothy Wynn (Wynn) Comments for Second Report).

¹³ Id. at para. 28 (quoting 47 U.S.C. 613(f)(4)(C)(iv)(I)).

for four years, beginning on January 1, 2021, and we invite comment on this proposal. As indicated in the Second Report, consumers seek expansion of the video description requirements to additional DMAs, and we believe our proposal will provide significant benefits to consumers who are blind or visually impaired and are located in DMAs 61 through 100. As stated, the CVAA provides the Commission with authority for this phase-in, “based upon the findings, conclusions, and recommendations contained in the [Second Report],” “(I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.” We propose that any further expansion beyond DMA 100 would be undertaken only following a future determination of the reasonableness of the associated costs.

9. We tentatively conclude that the costs of implementing the video description regulations in markets 61 through 100 are reasonable. The Second Report indicates that the costs of adding description to television programming have held steady since 2017. Costs thus remain at a level the Commission has previously considered “minimal,” relative to total programming expenses and network revenues, when it increased the required number of hours for described programming for commercial broadcast television stations affiliated with ABC, CBS, Fox, or NBC that are located in the top 60 television markets. Similarly, the record in the Second Report reflects that, for purposes of DMAs outside the top 60, “costs should be manageable for network affiliates that receive programming via a network feed and simply pass through any video description.”¹⁴ We seek comment on this tentative conclusion.

10. We note that covered broadcasters are currently required to have the necessary equipment and infrastructure to deliver a secondary audio stream in order to provide timely, audible emergency information to consumers who are blind or visually impaired, without

¹⁴ Id. at para. 27.

exception for technical capability or market size. Since video description is also provided via the secondary audio stream, we assume that broadcasters capable of compliance with the emergency information requirement also have the technical capability to comply with the video description requirements. We believe this supports our tentative conclusion that the costs of expanding the video description requirements to DMAs 61 through 100 would be “reasonable.” We seek comment on our analysis. The record gathered for the Second Report was not conclusive on other technical costs of providing video description, such as whether expenditures for any additional equipment might be necessary. Accordingly, we seek comment on this issue.

11. Further, we expect that the costs to program owners, providers, and distributors of providing video description in markets 61 through 100 are reasonable, and we invite comment on whether that is correct. Specifically, we invite comment on the costs of creating video-described programming for network affiliates in markets 61 through 100.¹⁵ We note that the First Report concluded that the costs of complying with the video description requirements were consistent with industry’s expectations at the time the rules were adopted and had not impeded industry’s ability to comply, and the record for the Second Report did not alter that conclusion. We believe that the costs of providing video description in DMAs 61 through 100 are similar if not the same as the costs of providing video description in DMAs that are already subject to the requirements. For example, network affiliated stations outside of the top 60 DMAs currently provide a substantial amount of video-described programming due to their pass-through obligation. Thus, this mitigates the costs associated with the proposed rule expansion. The record for the Second Report indicates that “compliance costs should be manageable for” network affiliated broadcasters that “typically receive programming via a network feed, and pass through the audio of any video described programming on their [secondary audio] channels, including

¹⁵ While there is no technical capability exception for network affiliated stations in covered DMAs, if commenters have information concerning broadcasters in markets 61 through 100 that are not technically capable of delivering a secondary audio stream, such information would be relevant to determining costs that these stations may incur as a result of this proceeding. We request that such information be presented in detail.

some stations in markets below the top 60 that do so voluntarily.”¹⁶ We seek information on how the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates should impact our analysis. Are there any network affiliates in any DMA that do not receive programming via a network feed?¹⁷ We assume that network affiliated stations in markets 61 through 100 would be able to satisfy the video description requirements entirely by using the programming they receive via a network feed. Is this assumption correct or would they incur costs to describe additional programming in order to meet the requirements? Are there differing costs incurred by stations owned by large station group owners as compared to smaller station group owners or single stations? Commenters should provide specific data on the costs that program owners, providers, and distributors would face if the Commission were to expand the video description requirements to an additional 10 DMAs each year, until all DMAs up to market 100 are covered. Would program owners and providers, as well as broadcast stations in DMAs 61 through 100, face additional costs as a result of the proposed expansion? If so, commenters should specify the nature and amount of those costs. Should we account for the current coronavirus pandemic in evaluating the reasonableness of costs of expanding video description requirements to markets 61 through 100, and if so, how?

12. In addition to information about costs, we also seek comment on the benefits of expanding the video description requirements to DMAs 61 through 100, including whether these benefits would outweigh any of the costs referenced above. In the Second Report, the Bureau described the record on this topic, which indicated that some video-described programming is available outside the top 60 DMAs but that consumers desire even more of such programming. It is indisputable that video description enhances the accessibility of video programming to

¹⁶ NAB Comments for Second Report at 8.

¹⁷ As noted above, all network affiliated stations, including those outside of the top 60 DMAs, are already required to “pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description.” 47 CFR 79.3(b)(3).

consumers who are blind or visually impaired. Would expanding the video description requirements to DMAs 61 through 100 substantially increase the availability of video description to consumers in these areas, therefore providing a significant benefit to such consumers? Commenters should provide specific data on the amount of video-described programming currently available in DMAs 61 through 100, as compared to the amount that would be available if the Commission were to expand the video description requirements to such DMAs. We also invite commenters to specify the benefits that consumers in the DMAs at issue would derive from the proposed expansion.¹⁸

13. If the Commission determines that the costs of implementing the video description regulations to program owners, providers, and distributors in DMAs 61 through 100 are “reasonable,” we invite comment on the compliance deadline for the expansion of the video description requirements. While the CVAA provides us with authority to expand the video description regulations to an additional 10 DMAs per year beginning on October 8, 2020, we propose to expand the requirements to DMAs 61 through 70 as of January 1, 2021, to provide entities with sufficient time for compliance. We propose that these expansions would continue with an additional 10 DMAs per year, until the requirements are expanded to DMAs 91 through 100 on January 1, 2024. In 2023, the Commission will determine whether to continue expanding to an additional 10 DMAs per year, with any further expansion to be undertaken only following a future determination of the reasonableness of the associated costs. We invite comment on these proposals. Would stations within the first DMAs subject to the expansion (DMAs 61 through 70) have a sufficient amount of time to comply, or should we provide more time for the first

¹⁸ Nielsen data from 2020 indicates that expanding the video description requirements to DMAs 61-70 on January 1, 2021 would cover more than an additional 4.22 million households, with more than an additional 3.63 million households by expanding to DMAs 71-80, more than an additional 3.25 million households by expanding to DMAs 81-90, and more than an additional 2.86 million households by expanding to DMAs 91-100. See MediaTracks Communications, Nielsen DMA Rankings 2020, available at <https://mediatracks.com/resources/nielsen-dma-rankings-2020/> (last visited Mar. 26, 2019).

compliance deadline?¹⁹ We do not expect there to be any need to provide more time for any station in a DMA outside the first group subject to the expansion because stations in other DMAs will be fully aware of the applicable compliance deadlines well in advance. Should the current coronavirus pandemic affect our decision regarding the compliance deadline, and if so, how?

14. We propose that any extension of the rules to additional DMAs should be based on an updated Nielsen determination, as the Commission did when previously expanding the application of the rules from the top 25 to the top 60 markets, and we invite comment on this proposal. The video description rules currently apply to stations “licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015.” If we utilize updated Nielsen figures, should the updated figures apply to determine the top 60 markets? What should be the compliance deadline for stations in a DMA that was not in the top 60 markets as of January 1, 2015, but is within the top 60 markets as of January 1, 2020? We believe that using updated Nielsen data would facilitate the roll out of video description obligations to more television households more efficiently.

15. If the Commission expands the video description rules to additional DMAs, we propose that section 79.3(d) of the Commission’s rules will govern any petitions for exemption due to economic burden. The video description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome.²⁰ The CVAA also provides that if an expansion of

¹⁹ We recognize that when the Commission reinstated the video description rules in 2011, there were approximately 10 months between the release of the order and the compliance deadline.

²⁰ The term “economically burdensome” means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for video description would be economically burdensome: (i) the nature and cost of providing video description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the video description requirements, and it evaluates economic burden with regard to the individual outlet. In the First Report, the Bureau stated its belief “that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into

the video description rules to additional DMAs occurs, “the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.” Section 1.3 governs waivers of the Commission’s rules generally. We tentatively conclude that §§ 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the video description rules to additional DMAs, and we invite comment on this conclusion.

16. Finally, we seek comment on whether there are any other issues with respect to our proposal to extend the video description rules to additional DMAs of which we should be aware.

17. *Modernizing Terminology.* Additionally, we propose to make a non-substantive amendment to the rules to substitute the term “audio description” for the term “video description” for purposes of part 79. Because the Commission’s definition of video description already references both terms, our proposed modernization of terminology should not change the substance of any regulations. As early as 2011, in response to the Commission’s Notice of Proposed Rulemaking, consumer and industry groups proposed using the term “audio description” instead of “video description.” Although the Commission previously sought comment on this proposal in its 2016 Notice of Proposed Rulemaking, the Commission has not yet resolved the matter. Recently, the Disability Advisory Committee (DAC) recommended that “the Commission, as soon as practicable, use the term ‘audio description’ to refer to described video programs when discussing or listing audio described programming.” The DAC points out that the term “audio description” is used by most federal agencies, and explains that consistency in terminology will help consumers and video providers avoid confusion. Indeed, our search to date has not revealed any other federal agency that uses the term “video description.” We are concerned that the use of inconsistent terms may cause confusion for consumers and industry. We recognize that terminology can become obsolete and, historically, agencies have made non-

effect for broadcast stations in television markets ranked 26 through 60 in 2015.”

substantive modifications to regulations to reflect the newer terminology, even if the pertinent statute itself may not have been amended. We therefore seek to refresh the record on our proposal to revise our rules to reflect the newer and more commonly used terminology. Because the current definition in the Commission’s rules treats the terms “video description” and “audio description” as synonymous, we propose to retain the statutory term “video description” in the definition while using the more commonly understood term “audio description” elsewhere in the rule. We invite comment on this proposal. We find that the Commission has authority to adopt update its terminology as proposed as part of its “continuing authority” to regulate video description. Updating the terminology does not implicate any limitation contained in the statute, nor does it make any substantive change to the rules. We invite comment on this analysis.

18. *Technical Update to the Rules.* Finally, we propose to make a non-substantive edit to the video description rules, to delete the outdated references in section 79.3(b)(1) and (4) to the compliance deadlines of July 1, 2015 and July 1, 2018, which have passed. We invite comment on this proposal.

19. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the FNPRM. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In summary, the *NPRM*: (1) proposes to expand the video description regulations by phasing them in for an additional 10 DMAs each year for four years, beginning on January 1, 2021; (2) proposes to modernize the terminology in part 79 of the Commission’s regulations to use the term “audio description” rather than “video description”; and (3) proposes to make a non-substantive edit to the video description rules, to

delete outdated references to compliance deadlines that have passed. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, and section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613. The types of small entities that may be affected by the proposals contained in the FNPRM fall within the following categories: Television Broadcasting, Wired Telecommunications Carriers, Cable and Other Subscription Programming, Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation Standard), Cable System Operators (Telecommunications Act Standard), and Direct Broadcast Satellite (DBS) Service.

20. The projected reporting, recordkeeping, and other compliance requirements are: (1) phasing in the existing video description requirements for an additional 10 DMAs each year, beginning on January 1, 2021 and continuing until January 1, 2024, with the extension based on an updated Nielsen determination; and (2) providing that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden, with section 1.3 of the Commission's rules governing waivers of the Commission's rules generally. The Commission's proposal to update the term "video description" to "audio description" is a non-substantive change that will not cause any new or revised reporting, recordkeeping, or other compliance requirements that would be applicable to small entities. The same is true of its proposal to make a non-substantive edit to the video description rules to delete the outdated references in section 79.3(b)(1) and (4) to the compliance deadlines of July 1, 2015 and July 1, 2018, which have passed. There is no overlap with other regulations or laws. The extension to DMAs 61 through 100 would have a limited impact on small entities. The *NPRM* focuses on engaging in a cost-benefit analysis to determine the effects the expansion would have. Comments on the *NPRM* will help us determine whether the benefits of the expansion would indeed outweigh any costs. The Commission has attempted to minimize the impact of the rules on small entities, and it invites comment on alternative approaches.

21. *Paperwork Reduction Act.* This document contains proposed new or revised

information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

22. *Ex Parte Rules—Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.²¹ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding,

²¹ 47 CFR 1.1200 *et seq.*

and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

23. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

24. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111-260, 124 Stat. 2751, and the authority contained in Section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613.

List of Subjects in 47 CFR Part 79

Communications equipment, Television broadcasters

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

PART 79 – ACCESSIBILITY OF VIDEO PROGRAMMING

1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

2. Amend § 79.2 by revising paragraph (b)(5) to read as follows:

§ 79.2 Accessibility of programming providing emergency information.

* * * * *

(b) * * *

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with paragraph (b)(2)(ii) of this section supersedes all other programming on the secondary audio stream, including audio description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

* * * * *

3. Amend § 79.3 by revising the heading and paragraphs (a)(3), (b) introductory text, (b)(1), (3) through (4), (5)(i) through (ii), (c)(2) through (3), (4)(i) through (ii), (5), (d)(1), (2) introductory text, (2)(i), (3), (10) through (11), (e)(1) introductory text, (3)(i) through (ii) to read as follows:

§ 79.3 Audio description of video programming.

(a) * * *

(3) Audio description/Video description. The insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

* * * * *

(b) The following video programming distributors must provide programming with audio description as follows:

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2020, must provide 50 hours of audio description per calendar quarter, either during prime time or on children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a previously unaffiliated station in one of these markets becomes affiliated with one of these networks, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized. On January 1, 2021, and each year thereafter until January 1, 2024, the requirements of this paragraph shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 2020;

* * * * *

(3) Television broadcast stations that are affiliated or otherwise associated with any television network must pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass

through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description;

(4) Multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 50 hours of audio description per calendar quarter during prime time or children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under these rules. Initially, the top five networks are those determined by The Nielsen Company, for the time period October 2009-September 2010, and will update at three year intervals. The first update will be July 1, 2015, based on the ratings for the time period October 2013-September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016-September 2017; and so on; and

(5) * * *

(i) Must pass through audio description on each broadcast station they carry, when the broadcast station provides audio description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description; and

(ii) Must pass through audio description on each nonbroadcast network they carry, when the network provides audio description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(c) * * *

(2) In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with audio description no more than a total of two times on each channel on which it airs the program. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter. A broadcaster may only count programs aired on its primary broadcasting stream towards its quarterly requirement. A broadcaster carrying one of the top four commercial television broadcast networks on a secondary stream may count programs aired on that stream toward its quarterly requirement for that network only.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with audio description, it is required to include audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(4) * * *

(i) Has aired a particular program with audio description on a broadcast station it carries, it is required to include audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description; or

(ii) Has aired a particular program with audio description on a nonbroadcast network it carries, it is required to include audio description with all subsequent airings of that program on that same nonbroadcast network, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(5) In evaluating whether a video programming distributor has complied with the requirement to provide video programming with audio description, the Commission will consider showings that any lack of audio description was de minimis and reasonable under the circumstances.

(d) * * *

(1) A video programming provider may petition the Commission for a full or partial exemption from the audio description requirements of this section, which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with audio description would be economically burdensome. The term “economically burdensome” means imposing significant difficulty or expense. The Commission will

consider the following factors when determining whether the requirements for audio description would be economically burdensome:

- (i) The nature and cost of providing audio description of the programming;

* * * * *

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission's final determination and any available alternative that might constitute a reasonable substitute for the audio description requirements. The Commission will evaluate economic burden with regard to the individual outlet.

* * * * *

(10) The Commission may deny or approve, in whole or in part, a petition for an economic burden exemption from the audio description requirements.

(11) During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the audio description requirements.

- (e) * * *

(1) A complainant may file a complaint concerning an alleged violation of the audio description requirements of this section by transmitting it to the Consumer and Governmental Affairs Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. Complaints should be addressed to: Consumer and Governmental Affairs Bureau, 445 12th Street, SW., Washington, DC 20554. A complaint must include:

* * * * *

(3) * * *

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets our audio description requirements if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the audio description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing audio description in excess of its requirements.

* * * * *

4. Amend § 79.105 by revising the heading and paragraphs (a)(1) and (b)(3)(i), to read as follows:

§ 79.105 Audio description and emergency information accessibility requirements for all apparatus.

(a) * * *

(1) The transmission and delivery of audio description services as required by §79.3; and

* * * * *

(b) * * *

(3)(i) *Achievable*. Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the audio description and emergency information requirements of this section pursuant to §1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

* * * * *

5. Amend § 79.106 by revising the heading and paragraph (b) to read as follows:

§ 79.106 Audio description and emergency information accessibility requirements for recording devices.

* * * * *

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of audio description signals and emergency information (as that term is defined in §79.2) such that viewers are able to activate and de-activate the audio description as the video programming is played back on a picture screen of any size.

* * * * *

6. Amend § 79.107 by revising paragraph (a)(4)(viii) to read as follows:

§ 79.107 User interfaces provided by digital apparatus.

(a) * * *

(4) * * *

(viii) *Configuration—Audio Description Control*. Function that allows the user to enable or disable the output of audio description (*i.e.*, allows the user to change from the main audio to the secondary audio stream that contains audio description, and from the secondary audio stream back to the main audio).

* * * * *

7. Amend § 79.108 by revising paragraph (a)(2)(vi) to read as follows:

§ 79.108 Video programming guides and menus provided by navigation devices.

(a) * * *

(2) * * *

(vi) *Configuration—Audio Description Control*. Function that allows the user to enable or disable the output of audio description (*i.e.*, allows the user to change from the main audio to the secondary audio stream that contains audio description, and from the secondary audio stream back to the main audio).

* * * * *

8. Amend § 79.109 by revising paragraph (a)(2) to read as follows:

§ 79.109 Activating accessibility features.

(a) * * *

(2) Manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, with built-in audio description capability must ensure that audio description can be activated through a mechanism that is reasonably comparable to a

button, key, or icon. Digital apparatus do not include navigation devices as defined in §76.1200 of this chapter.

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[FR Doc. 2020-09805 Filed: 5/20/2020 8:45 am; Publication Date: 5/21/2020]